

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSEPH J. GENTILE, JR.,

Plaintiff,

-against-

EDWARD BURNETT, ET AL.,

Defendants.

22-CV-8411 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff filed an action in 2021 in the United States District Court for the Western District of New York, *Gentile v. Latona*, No. 21-CV-1100 (JLS) (W.D.N.Y.), and some claims were severed and transferred to this district, where a new action was opened with this docket number, 22-CV-8411 (LTS). Because Plaintiff thus had two actions, he ordinarily would pay two filing fees.<sup>1</sup> The filing fee was collected for the action in the Western District of New York. By order dated April 6, 2023, the Court held that because Plaintiff had never been asked to submit a prisoner authorization form to authorize withdrawal of the filing fee for this new action in this district, it would not collect the fee for this action (ECF 32), which has since been dismissed for failure to state a claim on which relief may be granted. (ECF 33.)

In October 2023, the Court received a check for \$350.00 from Mohawk Correctional Facility for this action. Based on the Court's April 6, 2023 order, holding that the withdrawal from Plaintiff's prison account for this action had not been authorized, the Clerk of Court is directed to return the filing fee.

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<sup>1</sup> Under 28 U.S.C. § 1915(b)(1), prisoners are not excused from paying the \$350.00 filing fee even when proceeding IFP.

### CONCLUSION

For the reasons set forth herein, the Clerk of Court is directed to return the \$350.00 filing fee for this action.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: October 6, 2023  
New York, New York

/s/ Laura Taylor Swain

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LAURA TAYLOR SWAIN  
Chief United States District Judge